BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of Verizon's Joint Application for Authorization to Provide In-Region, InterLATA Service in the Commonwealth of Virginia	))))	WC Docket No. 02-214

REPLY COMMENTS OF CAVALIER TELEPHONE, LLC

Cavalier Telephone, LLC ("Cavalier"), through its attorneys, hereby files these reply comments in the above-captioned proceeding. Cavalier's initial comments focused on a number of issues that highlight the palpable failure of Verizon to satisfy a number of the checklist items requisite for Section 271 authorization.[1] In these reply comments, Cavalier focuses primarily on (i) supplementing the record in several of the points made in Cavalier's initial comments related to UNE DS-1 provisioning, Directory Listings, UNE Pricing and Billing and (ii) responding to the position that Verizon has expressed in recent *Ex Parte* Filings.

I. INTRODUCTION

Cavalier provides local and long distance voice and data services to customers in Virginia, primarily in the Richmond, Tidewater and Northern Virginia markets. Cavalier is attempting to be a full-services facilities-based provider to all customers in these markets, be they residential or business customers. To service these customers effectively and responsibly, Cavalier must be able to deliver a product quickly, reliably and with as little disruption as possible. If the product cannot be delivered in a timely manner, is unreliable or if the processes and provisioning of the service is rife with

[1] Cavalier's Comments, filed on August 21, 2002.

disruption, there is sure to be competitively significant implications to this struggling market.

To meet these customer demands, to implement the Telecommunications Act of 1996, and to be able to deliver its products in a competitively fair manner, Cavalier expects that Verizon, its wholesale supplier of unbundled local loops, will hold up its end of its responsibilities pursuant to Section 251 of the Act. However, Verizon has proven time and again that it has no desire to implement systems that would aid in the development of robust competition in the market for local exchange services. On the contrary, whether it is through the withholding of access to UNE DS-1 loops, or by refusing to provide accurate directory listings processes, or in a refusal to bring UNE pricing up to reflect current costs, or in unduly complicating the billing information provided to CLECs, the net result is the same. Competitors' costs of doing business are driven higher, the CLEC's ability to compete with Verizon is hindered and Verizon is able to play the lead role a concerted effort to drive out competitive alternatives to citizens throughout the Commonwealth of Virginia.

II. VERIZON'S UNE DS-1 NO FACILITIES POLICIES CONTINUE TO HARM COMPETITION IN VIRGINIA.

Verizon's steadfast unwillingness to accede to the Virginia Hearing Examiner's conclusion that Verizon's DS-1 provisioning policy "has a significant and adverse effect on competition in Virginia, is inconsistently applied across UNEs, is at odds with industry accounting rules, and is inconsistent with TELRIC-pricing principles,"[2] continues to work a slow death by strangulation on the ability of CLECs to compete

[2] Virginia SCC Case No. PUC-2002-00046, Report of Alexander F. Skirpan, Jr., Hearing Examiner (July 12, 2002) ("Hearing Examiner's Report") at 114.

against Verizon for small business customers in this crucial market. From the moment Verizon did an about-face in its DS-1 provisioning policies, Cavalier has diligently tracked the loss of access and continued discriminatory treatment meted out by Verizon.

In its initial comments, Cavalier provided the Commission with a summary of 787 UNE T-1 Orders for business customers placed with Verizon from the period May 31, 2001 through August 5, 2002.[3] Since that time, Verizon has met with staff at the FCC and has provided the Commission with a full presentation of its DS-1 provisioning policies.[4] As this *Ex Parte* filing reveals, the conclusion is inescapable that Verizon remains committed to exploit its monopoly position to demand arbitrarily high special access prices for the same "construction" work that Verizon willingly undertakes for its own customers. In addition, Verizon's self-imposed sham has *nothing* at all to do with "construction," Verizon's protestations notwithstanding ("Verizon is not a construction company"), and *everything* to do with abusive monopoly pricing.

The fact remains that in almost all circumstances the customer who requests CLEC services is an existing Verizon customer, or is served over existing Verizon loop plant, and that loop is "capable" of supporting T-1 high capacity services with minor adjustments and conditioning to the existing loop. The problem, stripped of all the rhetoric, is that Verizon does not believe its UNE DS1 pricing is high enough to recover its embedded costs.[5] However, if Verizon really believed that the UNE DS-1 prices do not adequately compensate Verizon for the TELRIC costs associated with provisioning

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[3] Cavalier's Comments at 7-10 and Exhibits 2T-02.pdf; 2T-03.pdf; and 2T-04.pdf.

[4] Verizon's *Ex Parte* Filing of Sept. 4, 2002 and handouts attached.

[5] Verizon's dissatisfaction with the TELRIC pricing regime and its relentless quest to recover its embedded, historical costs from CLECs in any way it can has been a constant litigation theme since the passage of the 1996 Act. *See, e.g., Verizon Communications Inc. et al vs. Federal Communications Commission et al*, -- S.Ct. – (No. 00-511)(May 13, 2002).

these UNEs, then the honest approach would be for Verizon to petition the State Commission's to institute new UNE pricing proceedings. Instead, Verizon figures that it may squeeze the CLECs through a "no facilities" policy. When so viewed, the Commission can easily determine that this is merely another method to do indirectly what Verizon has been unable to get the FCC or the Courts to allow it to do directly. The net effect is an unmitigated campaign to artificially drive up the costs to competitors as part of a plan to drive competitors out of the market for business customers.

To set the record straight, and to further respond to Verizon's "no facility" presentation to the staff of the Commission, Cavalier supplies the Commission with a summary, attached as Exhibit "A" to these reply comments, showing what is happening to *all* of Cavalier's DS-1 Orders over the same time frame analyzed earlier in its Initial Comments. As this summary reveals, when Cavalier's DS-1 network and wholesale customer orders are included with its retail customer orders, Cavalier placed a total of 1601 UNE DS-1 in this time frame.[6] Of these Orders, 33% of them were rejected on "no facilities" grounds by Verizon. Of these Orders, 150 were completed as special access orders and 98 more special access orders are still pending. Another 293 Orders were completed through the wasteful three-step "UNE-special access-UNE" process."[7]

However, even including all DS-1 Orders combined, the failure rate continues at an alarming 33% for Cavalier, and is in line with the Hearing Examiner's view that the

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[6] The summary is based on Cavalier's provisioning data for UNE Loops, UNE EELs and ASRs for Access Services, all to serve Cavalier's retail customers, wholesale customers, and Cavalier's network trunking needs.

[7] Exhibit "A" also reveals that the completed intervals for all DS-1's are shown to be 15 business days for UNEs, 20 business days for Special Access, and 35 business days for UNE-Special Access-UNE.

39% rejection rate creates a real competitive barrier.[8] A number of other CLECs report similar anticompetitive impacts.[9]

Finally, both the Hearing Examiner and the U.S. Department of Justice are reluctant to outright declare this anticompetitive behavior out-of-line with Section 271 out of deference to this Commission, and the prior Orders in the New Jersey and Pennsylvania 271 Determinations.[10] The buck then stops here, with the Commission and the Commission should stop Verizon's forced efforts to drag CLECs into a higher priced product through the artifice of longer and repetitive ordering processes. Beyond the fact that the record of evidence compiled in this proceeding vastly surpasses these other applications, Verizon's self-imposed "tripartite" UNE-Special Access-UNE triplicate ordering process has never before been put to competitive scrutiny in the context of a Section 271 application and neither does Verizon provide justification for the imposition of this wasteful and burdensome process in its *Ex Parte* filings, preferring to just ignore this competitive flaw entirely. Yet the fact remains that forcing CLECs to prepare three separate orders for the same product at a higher price and with a longer wait time makes a mockery of Section 251's obligation to provide reasonable and nondiscriminatory access to unbundled local loops.

Indeed, the fact that Verizon willingly permits a CLEC to obtain the UNE monthly recurring charge but only after this absurd ordering "game" is played out (and

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[8] Hearing Examiner's Report at 116 (finding that if provisioned, there would have been an equivalent to 117, 240 voice grade circuits up and running, almost doubling the number of access lines with CLECs during this same time frame).

[9] AT&T's Comments at 13; Covad's Comments (as of July 2002, 46% rejection rate); Starpower and USLEC's comments at 8; NTELOS Comments at 4; Allegiance Comments at 3.

[10] Hearing Examiner's Report at 115; U.S. DOJ Advisory Opinion, citing New Jersey 271 Order 151; Pennsylvania 271 Order 92.

presuming the customer is willing to wait around for all this delay), using the same "facilities" that existed before only with some minor configuring, only serves to prove the point that anticompetitive forces are at work to the detriment of CLECs trying to gain a competitive presence in Virginia.

III. VERIZON'S DIRECTORY LISTINGS PROCESSES CONTINUE TO PLAGUE COMPETITORS IN VIRGINIA

Cavalier and other CLECs have highlighted the flawed directory listings processes in their initial comments.[11] Verizon's recent *Ex Parte* Filing attempts to display that all is well and that the systems are in proper working order thanks to the Directory Listing Order Accuracy Metric (OR-6-04).[12] However, as the Department of Justice recently noted

> [a]lthough Verizon appears to meet or exceed the standard for Virginia's directory listings metric, this metric measures only one part of the upstream process of creating a directory listing. Currently, no metric in Virginia measures accuracy at the subsequent production phases for which CLECs are complaining about errors.[13]

And, and as Cavalier an others have proven, the production phase is riddled with processing errors.

Despite the hopeful wishes of the Hearing Examiner that Verizon's promises will fix the problems, according to Cavalier's latest reports, the error rates for this downstream "production phase" continue to demonstrate startling irregularities. For instance, Cavalier pointed out in its initial comments that Verizon created 2,967 errors that Cavalier had to fix (on its own dime) for Verizon in the South Hampton Roads LVR

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[11] Cavalier's Initial Comments at 21-27; NTELOS Comments at 11.

[12] Verizon's Ex Parte Filing of August 28, 2002 and attachment at pg. 14.

[13] U.S. DOJ Evaluation at 7.

(closed May 17, 2002), and 895 Verizon errors that Cavalier had to point out for Verizon in the Richmond LVR. Since that time, the review of the Richmond LVR continues and, despite the closing of the Richmond Directory review on September 13, 2002, Cavalier's most recent review of the LVR revealed there are still 1,314 total Verizon created errors (Residential: 1,234 and Business: 80).[14] If Cavalier did not take the trouble to quality check these listings, these 1,314 errors would likely generate errors in the final publication. More than a thousand errors just for Cavalier customers is an intolerable "standard" for the production phase of this process, and the Commission should not belittle this by succumbing to Verizon's strategy to co-opt CLECs into the job of fixing Verizon's problems so that it "appears" that the final product is the result of flawless Verizon processes, when in fact Cavalier has every right to refuse to even do this work for Verizon (since it is not compensated for it now). Cavalier's quality checking is nothing more than a courtesy job for Verizon, and a reflection of a complete lack of trust that Verizon's LVR's will accurately satisfy Cavalier that the listings will appear as ordered.

As the Justice Department points out, "RBOC-caused inaccuracies in directory listings can result in substantial competitive harm" and, quoting the FCC, "irregularities involving the white pages are a very serious matter because customers may tend to blame the new competitor, rather than the familiar incumbent, for mistakes."[15] Given the continued intolerable error rates that are caused by Verizon's internal processing of CLEC Directory Orders something must be done. As NTELOS suggests, allowing

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[14] These numbers are reported on the recent email from Cavalier's Directory Review Team, attached as Exhibit "B."

[15] U.S. DOJ Evaluation at 7, quoting the FCC Texas Order 358.

CLECs to directly deal with directory publisher is one time-honored method that would go a long way to ensure correct directory listings. NTELOS points out that other ILECs in Virginia deal directly with Verizon's publisher, without the necessity to slog through an intermediate "LVR" process.[16] Verizon refuses to allow this, and evidently prefers to force CLECs into more inefficient and error-prone system that has, thus far, evaded regulatory scrutiny or critique.[17] The only other alternative is to force Verizon to clean up its act, allow its processes a sufficient time for testing all the way through to production in the phone books, and then let's see if the results are competitively neutral so that the checklist item can be satisfied without mere promises to fix later.

Likewise, Cavalier cannot even get Verizon to respond to blatant problems with Directory Listings for business customers. As pointed out in its initial comments, business customers receive both a white page listing and a free Yellow Page listing, all off the same initial order inputted into the very same Verizon OSS that is under review in this proceeding.[18] Although Cavalier is able to initiate the yellow page listing in Verizon's OSS, through an LSR, Verizon's systems prohibit Cavalier from processing a change to that heading through the LSR later in the process. As a result, the business customer's listing is published inaccurately and the customer blames Cavalier for the error. In short, Verizon provides Cavalier with no tool to test the validity of the listinhgs or whether the listing will be inputted as the customer wishes. All of this compounds even further Cavalier's inability to verify the accuracy of the customers listings, further

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[16] NTELOS Comments at 11, noting that NTELOS experiences are based on actual comparison of its subsidiary R&B Telephone's directory experience as an ILEC with NTELOS as a CLEC.

[17] NTELOS Comments at 11-12.

[18] Cavalier's Comments at 23.

destroying a transparent and functional ordering relationship between the customer, its CLEC carrier and the wholesale provider of directory services, Verizon. Cavalier has initiated a trouble ticket to seek a reason for this denial, but has yet to receive an adequate response. The Commission should put a halt to this disruption to business customers' listings and force Verizon to provide Cavalier with access to the OSS to process such changes and to test the accuracy of the listings through this "production" phase as well.

Cavalier does not know why Verizon's systems continually break down and generate these unacceptable errors in what should be a relatively straightforward Directory Listings Ordering process, but the manifestations of these breakdowns are felt daily. The fact remains that there is something fundamentally wrong with Verizon's processes. Cavalier presented extensive evidence and testimony of the breakdowns caused when Verizon provides Cavalier with erroneous Alpha Numeric Listing Identifier ("ALI") Codes. Again, as Verizon pointed out in its recent Ex Parte Filing,[19] these are industry standardized codes that are used in combination with the billing account numbers and are critical identifiers for correct directory listings, particularly when there are multiple listings for the same billing account. As Verizon point out, "when CLECs migrate or create new listings associated with loop or full facility based services, the listings are added to the directory listing SBN and are assigned an ALI code by Verizon."[20]

Cavalier has complained for months that Verizon did not make the codes available to CLECs in real time and in a usable format for CLECs with large numbers of

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[19] Verizon *Ex Parte* Filing of August 28, 2002 ("Directory Listings Discussion").

[20] Verizon's *Ex Parte* Filing of August 28, 2002 at pg. 6.

listings. This led to Verizon's process of making the codes available to CLECs by a spreadsheet. Cavalier pointed out in its pre-filed testimony, and at the hearing, that the ALI code spreadsheet is riddled with errors. These errors were not disputed, but are minimized by Verizon's claim that overall the process is working and getting better. The Hearing Examiner did not buy Verizon's efforts to dismiss these problems so lightly,[21] and the Justice Department was similarly not impressed by these mere promises to do better without real time proof of improvements.[22] The Commission should likewise treat Verizon's veiled promises to better with deep skepticism.

Cavalier has been following whether Verizon is following through on its promises, and regrettably this is not happening. The ALI spreadsheets continue to contain erroneous information that continue to cause vast disruptions to Cavalier's ability to service its customers and to have faith that the listings will appear as ordered. As shown in the September 10, 2002 email from Cavalier's Directory Listings Supervisor, attached as Exhibit "C," the latest ALI Code spreadsheet reports over 11,600 listings for a BAN that is not even a Cavalier BAN. When Cavalier informed Verizon about this, Verizon told Cavalier to just ignore these listings, as they were mistakenly duplicated. The spreadsheets thus cannot be trusted by Cavalier to do what they purport to do.

Moreover, even where Verizon provides the correct ALI code, when Cavalier sends this ALI code with the directory listings order Verizon is sending back repeated

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[21] Hearing Examiner Report at pg. 146 ("I disagree with any attempts by Verizon Virginia to minimize the level of directory problems that have been experienced in Virginia").

[22] DOJ Evaluation at 9 (indicating that it is incumbent on CLECs to provide additional information to the FCC during the pendency of this proceeding "to assess more completely the effectiveness of Verizon's recent improvements").

queries that the ALI code does not match their records.[23] As a result, Cavalier has opened another trouble ticket for this problem (No. 578710), but Cavalier is fearful that these irregularities will disrupt the up-coming Richmond, Virginia phone book publication. Again, dysfunction continues to be the hallmark of Verizon's directory listings process, despite promises to do a better job. The net result is that Verizon still cannot provide Cavalier with an adequate wholesale directory listings product.

Until these problems are corrected and have been thoroughly tested in a yearly cycle of directory listings publications, Verizon cannot be said to meet the stringent standards set forth in Section 271(c)(2)(B)(viii) and Section 251(b)(3). At this point Verizon has not (i) provided CLECs with nondiscriminatory appearance and integration of white page directory listings to CLECs and (ii) provided white page listings for CLEC customers with the same accuracy and reliability that it provides its own customers.[24] Consequently, the Commission should refuse to grant Verizon Section 271 authorization in Virginia.

IV. VERIZON'S REFUSALS TO ADJUST ITS UNE PRICING TO REFLECT TELRIC COSTS CONTINUE TO DRIVE OUT COMPETITION IN CRUCIAL AREAS IN VIRGINIA.

In its initial comments, Cavalier pointed out how Verizon has road-blocked Cavalier's efforts to bring UNE prices to current TELRIC pricing at just one wire center (Bethia) to reflect substantial demographic changes and hence underlying costs required

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[23] Exhibit "D" is an email from Cavalier's Directory Listings Supervisor, dated September 10, 2002 revealing that Cavalier could not change the 20 listed PONs belonging to the Richmond Directory because Verizon's "system" reported that the ALI code inputted by Cavalier was wrong ("Invalid LSR/DL Form—ALI/TN Combination"). As this email reveals, Cavalier has confirmed that the correct codes were sent. Meanwhile, Cavalier cannot process the customer's request to change his/her listing.

to serve CLECs.[25] Verizon continues to refuse to even consider a reclassification, positing the fiction that one wire center's pricing cannot be considered without looking at all wire centers.[26]

In these reply comments, Cavalier urges the Commission to reject this fiction that it is not possible to evaluate the cost structure for one wire center without doing a complete state-wide review. Other states have refused to buy into Verizon's logic. For example, the Delaware Public Service Commission has ordered Verizon to re-evaluate its Density Cell classifications every three years, and "should the number of working pairs per square mile of an Exchange Area exceed or fall below the Density Cell criteria, the Exchange Area will be reclassified to the appropriate Density Cell."[27] The Commission should advise the Virginia SCC to institute a similar periodic review to account for the changing demographic conditions in Virginia and to prevent Verizon from overcharging CLECs in areas that no longer reflect rural density pricing realities. Until such evaluations occur, Verizon will continue to either force CLECs out of such regions, or will continue to obtain non-TELRIC prices in contravention to the obligations established under the Act and the Commission's implementing regulations.[28] Meanwhile competition will suffer and consumers in these regions will not have the benefit of choice for their local service provider.

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[25] Cavalier's Comments at 14-16.

[26] Id. (citing the Virginia SCC's Final Order deferring to Verizon's views); *See also* http://www.state.va.us/scc/caseinfo/puc/c010213.htm.)

[27] *In the Matter of the Application of Bell Atlantic-Delaware, Inc. For Approval of its Statement of Terms and Conditions Under Section 252(f) of the Telecommunications Act of 1996*, Delaware PSC Docket No. 96-324 at pg 10 (8/31/99).

[28] Cavalier is not the only CLEC complaining of the anticompetitive effects of distorted pricing in geographic regions undergoing change. *See* NTELOS Comments.

V. VERIZON'S MEET-POINT-BILLING DATA CONTINUE TO UNDERMINE ACCURATE BILLING TO THE FURTHER DETRIMENT TO THE FINANCIAL HEALTH OF THE INDUSTRY.

In an *ex parte* meeting with staff,[29] Cavalier pointed out that Verizon's responsibilities to issue accurate "meet point billing" tapes for purposes of allowing CLEC's and interexchange carriers has also been revealed to be broken. In short, carriers rely on the information on the meet point billing tapes that should reflect whether the call is local or toll, for purposes of billing the originating carrier for the appropriate access services at the appropriate rate. Cavalier has determined that Verizon has failed to break out the local traffic from the information supplied, so that carriers are billing Cavalier for access charges when in fact the calls are local calls. Cavalier has disputes with other carriers over this, but the point here is that it is Verizon's responsibility to parse out the traffic. Instead, Verizon has created a situation where carriers are chasing each other for payment based on erroneous assumptions. This problem can only create further disruption to accounting and financing practices that are coming under intense scrutiny by government officials and the public.

In a recent *ex parte* presentation, Verizon once again attempts to avoid scrutiny for this debacle by suggesting that the CLEC should do the work to determine the true nature of whether the calls are local.[30] However, in the call records sent to the CLEC for review, the actual calling information is hidden since Verizon overlays all the calls with a "999999" designation, making it impossible for Cavalier to know whether the call is local or not. Once again, Verizon's misguided strategy to force CLECs to do Verizon's work

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[29] Cavalier *Ex Parte* Meeting of August 20, 2002.
[30] Verizon's Ex Parte Filing of August 28, 2002 at pg. 2.

to fix Verizon's flawed processes cannot pass muster with this Commission. Verizon is required to provide "competing carriers with complete and accurate reports on the service usage of competing carriers' customers in substantially the same time and manner that it provides such information to itself . . . ."[31] This latest example of undue confusion caused by inaccurate and unreadable meet point billing tapes reflects that Verizon is not abiding by its obligations to provide access to OSS billing functions pursuant to Section 251 of the Act.[32]

VII. CONCLUSION

Cavalier has struggled through more than three years to provide residential and business customers with a facilities-based alternative for local exchange services. That struggle continues, but is made all the more difficult when the monopoly provider of an essential component manipulates its dominant market position to deny Cavalier with reasonable and nondiscriminatory access to basic wholesale services. Cavalier urges the Commission to put aside Verizon's claims that all is well in Virginia, and to examine the true state of the development of competition in Virginia. Cavalier asks the Commission to carefully scrutinize Verizon's application and ensure that only until the problems identified by Cavalier are adequately addressed and proven to be corrected should Verizon be allowed to enter the long distance market pursuant to Section 271 of the Act.

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[31] *Application of Verizon New England Inc., et al for Authorization to Provide In-Region InterLATA services in Massachusetts*, CC Docket No. 01-9, FCC 01-130 at 97 (rel. Apr. 16, 2001).

[32] 47 U.S.C. 251(c)(3).

Respectfully Submitted,

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